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April 12, 2001

Mr. Allen Lyons
Chief, New Vehicle/Engine Program Branch
Air Resources Board
9500 Telstar Ave
El Monte, CA 91731

Subject: Service Information Rulemaking (Mail-Out #MSO 2001-04)

Dear Mr. Lyons: 

The Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers are trade associations, which together represent nearly all of the car and light truck manufacturers selling vehicles in California. The Alliance and AIAM appreciate the opportunity to review and comment on the proposed Service Information regulations.

We hope to work closely with the Air Resources Board (ARB), the US Environmental Protection Agency (EPA), and independent repair technicians to develop a regulation that accomplishes three goals: 1) provides the technicians the information and tools needed to quickly and accurately repair vehicles; 2) protects automakers' proprietary OBD information; and 3) prevents duplicate or conflicting federal and California requirements which could confuse automakers and independent technicians alike. In this spirit, we offer the following comments:

During the development of SB 1146 (Burton), the Alliance, AIAM, and our members were actively involved and particularly concerned about the potential to require the disclosure of proprietary OBD information. Such disclosure would damage automakers' claim to proprietary information and result in adverse impact on California's air quality in at least two ways.

First, release of proprietary OBD computer information could allow the design and installation of computer codes that would effectively disable the OBD system. Once the OBD system is disabled, parts that result in significant emission increases could be installed on vehicles. Second, vehicle owners could also have the OBD system disabled rather than repairing a polluting vehicle. Both of these outcomes would directly and adversely impact air quality – an outcome neither automakers nor ARB desire. The legislature acknowledged our concerns with proprietary information and put protections into the statute to protect this information. The Alliance and AIAM intend to work with ARB to maintain these statutory protections.

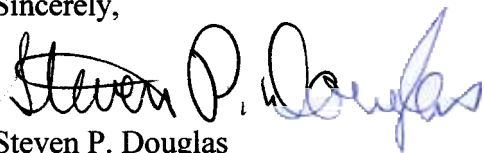
In this rulemaking, we should attempt to harmonize the EPA and ARB service information regulations. While California's air quality might pose unique problems calling for unique pollution control strategies, the same is not true for vehicle repair. Automotive technicians in California require the identical information, tools, and knowledge to quickly and accurately repair a vehicle as those technicians in Alabama or any other state. Thus, the regulations that ARB and EPA adopt should be identical except where ARB must go beyond EPA for statutory

reasons. In fact, the Alliance and AIAM recommend that ARB reference EPA regulations to prevent any disparity from developing over the years between the two regulations. Harmonizing the federal and California regulations will benefit the ARB, EPA, automakers, and technicians.

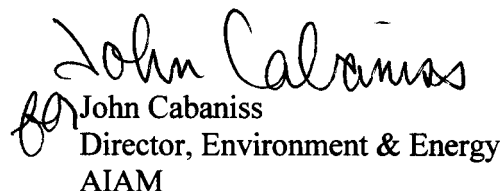
The Alliance and AIAM agree with most of the subject proposal, and it is our intent to work as cooperatively as possible while observing the above broad goals. With this in mind, we offer the specific comments in the Attachment to this letter. In addition to providing these written comments, we intend to submit separate comments on the legal aspects of this rule and will, along with our members, actively participate in the April 18 workshop.

We look forward to working with you and others as we proceed with this regulation. Please do not hesitate to call if you have any questions or need additional information.

Sincerely,



Steven P. Douglas
Director, Environmental Affairs
Alliance



for John Cabaniss
Director, Environment & Energy
AIAM

cc: Holly Pugliese, EPA

Attachment

1. APPLICABILITY OF THE REGULATION (PROPOSED SECTION 1969(a))	....1
2. DEFINITIONS (PROPOSED SECTION 1969(b))	.....1
2.1 Fair, reasonable, and nondiscriminatory price (Section 1969(b)(9))	.....1
2.2 Definition of “day” (PROPOSED Section 1969(b)(12))	.....2
3. SERVICE INFORMATION (PROPOSED SECTION 1969(c))	.....3
3.1 Training Information (Section 1969(c)(1))	.....3
3.2 On-Board Diagnostic Information (Section 1969(c)(2))	.....3
3.2.1 Mode 6 Information (Section 1969(c)(2)(G))	.....3
3.3 On-Board Diagnostic Reprogramming (Section 1969(c)(3))	.....3
3.4 On-Board Computer Initialization Procedures (Section 1969(c)(4))	.....4
3.5 On-Board Diagnostic Information (Section 1969(c)(5))	.....4
4. INTERNET ACCESS (SECTION 1969(d))	.....5
4.1 Information Available under Subsection (c) (Section 1969(d)(1))	.....5
4.1 Off-Line Availability (Section 1969(d)(2))	.....5
4.2 Website Search Engine Requirements (Section 1969(d)(3)(D))	.....5
4.3 Website Contact Person (Section 1969(d)(3)(F))	.....5
4.4 Training Class Schedules (Section 1969(d)(3)(H))	.....6
5. Diagnostic Equipment and Information (Section 1969(e)(1)(B))	.....6
6. Trade Secrets (Section 1969(h))	.....6
6.1 General Comment on Times (Section 1969(h) and (i))	.....6
6.2 Request for Information (Section 1969(h)(3)(A) and (B))	.....7
7. PENALTIES (Section 1969(l))	.....7

1. APPLICABILITY OF THE REGULATION (PROPOSED SECTION 1969(a))

The Alliance and AIAM agree that the service information portion of this regulation should apply to all 1994 and later model year vehicles equipped with OBD II. However, that portion of the regulation requiring a general description of the OBD II system (i.e., Section 1969(c)(2)) should only apply to 1996 and later model year vehicles. This was clearly the intent and direction of the legislature (see Section 43105.5 Paragraph 4 of the statute).

2. DEFINITIONS (PROPOSED SECTION 1969(b))

2.1 Fair, reasonable, and nondiscriminatory price (Section 1969(b)(9))

The Alliance and AIAM agree with the requirement to provide information at a fair and reasonable price. However, fair and reasonable applies in both directions. That is, it should be fair and reasonable to the independent shop purchasing the tools or information and to the automaker providing it. Using this standard, the standards proposed in the regulation can in no way be considered “fair and reasonable.” The plain language discussion of the regulation states the intent of the factors is to “permit automakers to recover cost associated with providing required information and diagnostic tools, but not to the point that the providing of information is a source of profit.” Ironically, ARB prohibits

automakers from making a profit on the information provided, where the purpose of providing this information is so that others can make a profit.

It is unlikely that service information will become a significant “source of profit” as the regulatory proposal suggests. However, it would be in the best interest of all if service information were to become profitable, since this would lead to market competition – a far better alternative than automakers providing information at a substantial loss. While the latter (providing information at a loss) is more likely the case, there appears to be no requirement or any incentive for ARB to establish this as a goal of the regulation.

Notwithstanding the concerns above about profit, some specific comments on two of the proposed factors:

- Net cost to dealerships: This factor completely ignores the substantial fees paid by and requirements imposed on franchised new car dealerships. If the intent of this factor is to ensure equity between franchised dealerships and independent repair shops, the “net cost to the motor vehicle manufacturers’ franchised dealerships for similar information” should include fees and requirements, which franchised dealers are required to pay and meet.
- Cost for preparing and distributing: Presumably, this factor accounts for the cost to develop information, and is not limited to the cost of distribution. Excluding the cost to develop information would be the equivalent of restricting the price of audio compact disks (CD) to the cost of a blank CD (i.e., 20 cents). Automakers should be allowed (or required) to recover the full cost of producing information (e.g., from developing the diagnostic procedures to establishing an Internet site and server).
- Profit: Any discussion of profit should be deleted from the plain language regulatory description and from the regulation by revising section 9 to read “...means a reasonable price that allows manufacturers to recover cost of providing required information and diagnostic tools considering the following:”

2.2 Definition of “day” (PROPOSED Section 1969(b)(12))

Since the term “day” is used throughout the regulation, it would be prudent for ARB to provide a definition in Section 1969(b). The Alliance believes it reasonable to define “day” as a business day. This definition is consistent with the definition proposed in ARB’s draft OBD enforcement regulation, Section 1968.2. In fact, since this term is used throughout ARB’s regulations, it may allow for more consistency, if this definition is placed at a central location.

3. SERVICE INFORMATION (PROPOSED SECTION 1969(c))

3.1 Training Information (Section 1969(c)(1))

Using the Internet to deliver the most current service information improves a technician's ability to quickly and accurately diagnosis and repair vehicles. To this end, independent repair shops could benefit from Internet access to service manuals, diagnostic manuals, wiring diagrams, technical service bulletins, and recall service bulletins, and the Alliance and AIAM support these provisions.

However, some information (e.g., interactive computer training programs and other training materials) does not lend itself to Internet availability and is normally distributed on CD-ROMs for a number of reasons. First, the format of the material is such that it cannot be transmitted over the Internet in a reasonable manner. Downloading the contents of a 600 Mega-Byte CD-ROM would take hours even over the fastest broadband connections. Second, maintaining control (i.e., preventing software piracy) of copyrighted computer programs distributed over the Internet is very difficult, as evidenced by the lack of widespread availability of commercial software (Excel, WordPerfect, Quicken, etc.) over the Internet. Finally, training materials are not necessary for the immediate repair of vehicles in the shop.

For these reasons, the Alliance and AIAM recommend eliminating the requirement to make the content of training information available on the Internet. Instead, we support a requirement to provide electronic ordering capability on their website for all training information.

3.2 On-Board Diagnostic Information (Section 1969(c)(2))

Again, the general description of each OBD II system should be limited to 1996 and later model year (MY) vehicles, as the legislature intended. The Alliance recommends clarifying this section as follows, "For 1996 and subsequent passenger cars, light-duty vehicles, and medium-duty vehicles equipped with on-board diagnostic systems pursuant to Section 1968.1, motor vehicle manufacturers shall make available..."

3.2.1 Mode 6 Information (Section 1969(c)(2)(G))

This information is currently provided without scaling information (i.e., just a raw number without units). The Alliance and AIAM understand the intent of this section is to provide only the scaling information necessary to determine the proper units for data provided via Mode 6, and can support this.

3.3 On-Board Diagnostic Reprogramming (Section 1969(c)(3))

The wording of this section might be interpreted to require the disclosure of actual OBD calibration information and prevent the encryption of this information. Manufacturers do

not disclose this information to either dealerships or independent repair facilities. We understand that it is not your intent to require disclosure of this information. To clarify this intent, the Alliance and AIAM recommend adding the following at the end of this section: "Nothing in this paragraph is intended to require manufacturers to provide information in a format different than the format the information is provided to their franchised dealers, nor does anything in this paragraph require manufacturers to provide more information than is provided to their franchised dealers."

3.4 On-Board Computer Initialization Procedures (Section 1969(c)(4))

The Alliance recognizes the need to be able to restart a vehicle after a repair involving replacement of an on board computer which could also be part of the vehicle security system. It is also critical that the integrity of the security system on the vehicle be protected. The integrity of this system is important to the vehicle owner in order to protect their property and keep insurance rates stable.

The regulation must allow for processes that help to ensure this protection. We would like to first recommend a statement at the end of this paragraph stating that nothing in this paragraph requires manufacturers to make available security or initialization algorithms. We would also like to discuss this further with ARB and EPA to ensure consistency and the protection of vehicle security.

3.5 On-Board Diagnostic Information (Section 1969(c)(5))

The Alliance and AIAM recommend implementing these regulations on January 1, 2003, instead of 90 days after the effective date of the regulation. This start date is sufficiently timely for independent technicians, provides minimal lead-time, a firm and realistic date to work toward for automakers. (As proposed, the regulation could become effective in April 2002, in August 2002 or in February 2003, depending upon when ARB Staff completes the 15-day notice and submits the final statement of reasons to the Office of Administrative Law). Further, we believe it is reasonable to establish the same compliance date as the new EPA Service Information Act (i.e., January 1, 2003) in order to implement compliance actions for the regulations at the same time.

We also recommend that ARB include the same small volume manufacturer provisions, which EPA is planning to include in its proposal.

For new vehicles introduced after the effective date of the regulation, the Alliance and AIAM recommend revising this paragraph to require manufacturers to make available the service information for a vehicle within 90 days from the date the information is delivered to the dealership, or as allowed by the Executive Officer. We recommend this change for a couple of reasons.

First, vehicles are virtually never repaired outside of a dealership within the first year of the vehicle life. This change would provide the information within 90 days of providing it to the dealer. Consequently, the additional time should not adversely impact independent

repair facilities. The additional time, however, can be very useful to a manufacturer since the information is sometimes in a different format when it is delivered to dealerships (e.g., when delivered via satellite downlink). Thus, the information may need to be revised before being put on the Internet.

Automakers, ARB, and EPA should work together to reach a consensus on the same compliance dates.

4. INTERNET ACCESS (SECTION 1969(d))

4.1 Information Available under Subsection (c) (Section 1969(d)(1))

Section 1969(d)(1) requires all information required to be available under subsection (c) to be available on the Internet. Subsection (c) includes "reprogramming information and materials" in (c)(3) and "on-board computer initialization procedures" in section (c)(4). We believe that if this information is in the form of text that describes a manual procedure, such as a manual method to initialize an on-board computer, that the information should be included in the service information in section (c). But, any information that requires communication between a tool and a vehicle is covered with "Diagnostic and Reprogramming Equipment and Information" in section (e). That information is not appropriately classified as service information that should be available via the Internet.

4.1 Off-Line Availability (Section 1969(d)(2))

The Alliance and AIAM oppose this requirement. We would support providing the information in an additional format if the manufacturer provides that same information in a different format to their franchised dealerships.

4.2 Website Search Engine Requirements (Section 1969(d)(3)(D))

Automobile manufacturers intend to ensure that information is readily available as quickly as possible to the individual users. Some of the proposed search criteria, however, will inflate cost without providing a meaningful improvement in accessibility. The websites will be designed for use by repair technicians who are both computer literate and knowledgeable on the information they are seeking. Thus, a requirement to provide for searches using VIN is not necessary. Model and model year searches are often used instead of VIN searches. The additional search criteria, while not significantly improving the site, would add cost. The more flexible the requirements, the more creative and innovative website managers can be in designing robust and effective systems.

4.3 Website Contact Person (Section 1969(d)(3)(F))

The Alliance and AIAM support identifying a contact person on the website, similar to most websites which link to the email of the Webmaster, who can answer questions related to the website. However, the Alliance and AIAM believe that a phone contact and the

specified time requirements (e.g., available during all “normal” business hours in California, or respond within 24 hours) are neither needed nor cost-effective.

A phone bank will drive up the cost of both providing and obtaining service information. Today’s automobile technicians are, of necessity, computer savvy and should not normally need instant access to a Webmaster to answer Internet operation questions. Further, in order to ensure direct communications during “all normal business hours in California” and respond “within 24 hours,” multiple operators must be hired, trained, and available throughout the day. This will substantially increase the costs of maintaining the website without any noticeable improvement in service.

We recommend revising this section to read, “Identifies a contact person (Webmaster) who is familiar with the operation of the site and provides email access to the Webmaster. The website shall also provide a business address for the purposes of receiving overnight or certified mail.”

4.4 Training Class Schedules (Section 1969(d)(3)(H))

We oppose making training class schedules available on the Internet. Manufacturers do not have sufficient capacity to train non-dealership technicians, and we do not see any benefit of providing schedules. We instead recommend that each automaker establish a separate section on the website for training materials. These materials (video tapes, CD-ROM interactive training courses, course material for the classes, etc.) could be ordered from the site. We believe this is far superior to class schedules, which could be confusing for everyone, not to mention troublesome to maintain up-to-date.

5. Diagnostic Equipment and Information (Section 1969(e)(1)(B))

This section could be interpreted to require automakers to provide all of the proprietary information related to diagnostic tools including the actual design of the tool itself. Tool design information is obviously proprietary and automakers would oppose a requirement to release this information. Further, we do not believe this was ARB’s intent in drafting this requirement. To clarify this provision, the Alliance and AIAM recommend ARB revise this paragraph to read, “...all information necessary to read and format all emission-related data stream...” This would delete “design and manufacture” since tool makers do not need automaker design or manufacturing information.

6. Trade Secrets (Section 1969(h))

6.1 General Comment on Times (Section 1969(h) and (i))

This section imposes a myriad of time constraints on manufacturers. To name just a few:

- **3 days** to make information available to requesting party if oversight (Section (h)(3)(A))
- **7 days** to make information available to all parties if oversight (Section (h)(3)(A))

- **14 days** to notify requesting party of trade secret status (Section (h)(3)(B))
- **Immediately** provide information to requesting party if informal resolution (Section (h)(3)(C))
- **7 days** to make available information to requesting party if informal resolution (Section (h)(3)(C))
- **21 days** to petition California superior court (Section (h)(3)(D))
- **15 days** to respond to ARB order to show cause (Section (i)(1)(D))
- **15 days** to respond to covered party request for review (Section (i)(2)(D))
- **30 days** for ARB to commence investigation of covered party request for review (Section (i)(2)(E))
- **60 days** for ARB to make a determination of the merits of covered party request for review (Section (i)(2)(E))

The Alliance and AIAM recommend a consistent time to respond of 30 days or additional time as approved by the Executive Officer. This will streamline the procedure and prevent misunderstandings about the time for response.

6.2 Request for Information (Section 1969(h)(3)(A) and (B))

This section imposes time constraints impossible to meet even under the best possible circumstances. For example, if information is inadvertently withheld this section requires automakers to receive, process, review, determine the request is valid and the information is not available but should be and then make the information available. All within 3 days! Such requirements, particularly in light of the regulatory sanctions for non-compliance, would require full-time staff to process. This, in turn, would increase the cost for automakers and technicians all to fulfill a requirement that could be just effective if the time period for a response is 30 days. The Alliance and AIAM therefore recommend allowing automakers 30 days, or additional time as approved by the Executive Officer, from the time of receipt to make a determination of trade secret status and either make the information available to all parties or provide the response required by Section 1969(h)(3)(B).

7. PENALTIES (Section 1969(l))

As proposed, the regulation allows the ARB Executive Officer to “suspend approval of the motor vehicle manufacturers’ pending certification applications until compliance is achieved.” This allowance appears to directly conflict with legislative intent and history. In the original version of SB 1146 (Burton), Section 43105.5(d) required ARB to “suspend the certification process of all motor vehicles or motor vehicle engines not yet certified by the state board for that motor vehicle manufacturer.” However, on June 24, 1999 the provision related to suspending certification was deliberately deleted from the bill. The Alliance and AIAM request that this provision be similarly deleted from the proposed regulation.